Remarks

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 1-12 and 29-45 are pending in the application, with claims 1, 29, 33, and 38 being the independent claims. Claims 1, 4, 5, 29-34, and 38 are sought to be amended. Support for the amendments is found at least at, for example, paragraphs [0014], [0020], [0052], [0055] - [0057], [0097] and [0098] and FIGs. 1 and 5-11 and originally filed claims 29 and 38 of Publication No. 2005/0223242 A1 to Satyajit NATH (alternatively, "the Specification"). Applicant reserves the right to prosecute similar or broader claims, with respect to the withdrawn and amended claims, in the future.

These changes are believed to introduce no new matter, and their entry is respectfully requested.

Based on the above amendment and the following remarks, Applicant respectfully requests that the Examiner reconsider all outstanding rejections and that they be withdrawn.

Statement of Substance of Examiner Interview

Further to the Interview Summary mailed July 14, 2010, Applicant submits the following Statement of Substance of Interview conducted between the Examiner and Applicant's representative, Randall K. Baldwin on July 13, 2010. Applicant's representatives gratefully acknowledge the courtesies extended to them by the Examiner in granting a telephone interview on July 13, 2010, during which discussions with Applicant's representative, Randall K. Baldwin, the Examiner clarified his comments regarding his interpretation of the teachings of the applied references. In particular, the

Examiner clarified his comments regarding claims 1, 29, 33, and 38 and the Examiner's interpretation of the teachings of Merriam and Todd. Applicant's representative also discussed distinctions between independent claims 1, 29, 33, and 38 and the applied references. Applicant's representative additionally discussed with the Examiner proposed amendments to claim 38 to convey the aforementioned distinction between the applied references, but no specific agreement was reached. Applicant's representative also discussed proposed amendments to claims 29-34 and the Examiner agreed that the proposed amendments would overcome the rejection of claims 29, 30, and 32-44 under 35 U.S.C. § 101. Applicant's representative further discussed with the Examiner the restriction requirement dated March 2, 2010 and the Election pleading filed on April 1, 2010. The substance of the discussion and arguments in the telephone interview is included in the present remarks.

Restriction Requirement

In advance of subsequent examination and in response to the Restriction Requirement dated March 2, 2010 and the Examiner's comments on page 2 of the Office Action, Applicant hereby elects to prosecute the invention of Group I, represented by claims 1-12 and 29-45. This election is made without prejudice to or disclaimer of the other claims or inventions disclosed.

As discussed during the aforementioned telephonic interview, this election is made without traverse.

Rejection under 35 U.S.C. § 101

Claims 29, 30, and 32-44 were rejected under 35 U.S.C. § 101 because the claimed invention was allegedly directed to non-statutory subject matter. Applicant respectfully traverses this rejection.

The Examiner asserts "the claimed invention is directed to non-statutory subject matter" and that the claims "are not [directed to] one of the four statutory categories of patent eligible subject matter." (Office Action, pages 4-5). As discussed during the aforementioned telephonic interview, although Applicant believes these claims represent statutory classes as previously pending in the application, Applicant has amended claims 29-34 and 38 merely in order to expedite prosecution without conceding the propriety of the rejection.

Claims 29-32 as amended herein recite computer-implemented methods for distributing cryptographic keys used in a file security system comprising a computing device.

Claims 33-37 as amended herein are directed to file security systems comprising, *inter alia*, a processor and a memory having instructions stored thereon, that, in response to execution by the processor, cause the processor to restrict access to electronic files.

Claims 38-44 as amended herein are directed to non-transitory computer readable media having computer-executable instructions stored thereon for providing data retention for electronic data.

Support for the amendments is found in the specification, at least at, for example, paragraphs [0014], [0020], and [0098] and in FIGs. 1 and 5-11 and originally filed claim 38. Therefore, claims 29, 30, and 32-44 are tied to statutory classes.

Accordingly, at least based on the amendments above, Applicant respectfully requests that the rejection of claims 29, 30, and 32-44 under 35 U.S.C. § 101 be reconsidered and withdrawn, and that the claims be allowed.

Rejections under 35 U.S.C. § 102

Claims 38-44 were rejected under 35 U.S.C. § 102(a) as allegedly being anticipated by a conventional Compact Disc storing text data. Applicant respectfully traverses.

With reference to previously pending claim 38, the Examiner states, which Applicant does not acquiesce to, that "mere instructions stored on a computer readable medium is nonfunctional printed matter, and nonfunctional printed matter cannot be used to distinguish over a CD storing text data because there is no functional relationship between the instructions and the computer readable medium." (Office Action, page 6). As discussed during the aforementioned interview, merely in order to expedite prosecution and without conceding the propriety of this rejection, Applicant has herein amended independent claim 38. Claim 38 as amended herein recites, *inter alia*: a computer readable medium having **computer-executable** instructions stored thereon for providing data retention for electronic data. As discussed during the interview, a computer readable medium having computer-executable instructions stored thereon is not analogous to "nonfunctional printed matter." Claims 39-44 depend from claim 38 and are believed allowable for the same reasons. See, *In Re Fine*, 837 F.2d 1071 (Fed. Cir. 1988), and M.P.E.P. § 2143.03.

Claims 1-3 and 33-41 were rejected under 35 U.S.C. § 102(a) as allegedly being anticipated by U.S. Pat. No. 6,915,435 to Merriam ("Merriam"). Applicant respectfully traverses this rejection for the reasons stated below.

Anticipation under 35 U.S.C. § 102 requires showing the presence in a single reference disclosure of each and every element of the claimed invention, arranged as in the claim. See *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick*, 221 U.S.P.Q. 481, 485 (Fed. Cir. 1984). Further, "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." See *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987) and M.P.E.P. §2131. Applicant respectfully submits that Merriam does not satisfy these requirements of Section 102.

Merely in order to expedite prosecution without conceding the propriety of any rejection, Applicant has herein amended claims 1, 33, and 38. Applicant respectfully submits that there are a number of technical differences between Merriam and amended independent claims 1, 33, and 38.

Claims 1, 33, and 38 recite features that distinguish over Merriam. For example, claims 1 and 38 as amended herein recite, using respective similar language, among other features "cryptographically associating, using a cryptographic key, the document retention policy with the electronic document, *wherein the cryptographic key is a document retention key or a key encrypted with a document retention key, and wherein the cryptographic key is protected by a document access policy.*"

Also, for example, claim 33 as amended herein recites, *inter alia*:

> instructions for storing a plurality of cryptographic key pairs in a key store, each of the cryptographic key pairs including a public key and a private key, at least one of the cryptographic key pairs pertaining to a

retention policy, the retention policy being dependent on a future event,
*wherein the cryptographic key pairs are document retention keys
or keys encrypted with a document retention key, and wherein the
cryptographic key pairs are protected by a document access policy*[.]

With reference to previously pending claim 1, the Examiner asserts, which Applicant does not concede, that "the limitation "cryptographically associating, using a cryptographic key, the document retention policy with the electronic document" is anticipated by any invention where a cryptographic key is used to encrypt an electronic document and access to the cryptographic key depends on a retention policy" and "this is exactly what Merriam discloses." (Office Action, page 3).

Even assuming *arguendo* that the Examiner's characterization of Merriam is correct, which Applicant does not acquiesce to, Merriam fails to describe, expressly or inherently, at least "wherein the cryptographic key is a document retention key or a key encrypted with a document retention key, and wherein the cryptographic key is protected by a document access policy," as recited, using respective language, in claims 1 and 38. Although Merriam generally describes that "many companies implement policies (often referred to as information retention policies) under which information sets are systematically deleted from the system" and "[t]hese policies set forth criteria for determining if and when an information set is to be deleted, and are often time-based, such that an information set is deleted after having been in the system for a certain amount of time" (Merriam, col. 1, lines 10-17), Merriam is silent regarding the capability of "cryptographically associating, using a cryptographic key, the document retention policy with the electronic document, wherein the cryptographic key is a document retention key or a key encrypted with a document retention key, and wherein the cryptographic key is protected by a document access policy," as recited in amended

claim 1. While Merriam discusses a "retention manager" that implements "a predetermined information retention policy," wherein the "policy sets forth the criteria for determining if and when an information set is to be purged from the information system" (Merriam, col. 6, lines 14-26), Applicant respectfully submits that Merriam lacks any express or inherent description of the above-noted distinguishing features of claims 1, 33, and 38.

Merriam discloses that an "information manager 110 encrypts (214) the information set using the selected key, and then stores (216) the encrypted information set 120 into one or more of the persistent information repositories" (Merriam, col. 5, lines 11-14 and FIGs. 1 and 2). However, even assuming for the sake of argument that Merriam's "information set," "information retention policy," and "selected key" are analogous to the document retention policy, the electronic document, and the cryptographic key recited in claim 1, Merriam, in the sections cited by the Examiner, or in other sections, lacks any express or inherent description of "cryptographically associating, using a cryptographic key, the document retention policy with the electronic document, wherein the cryptographic key is a document retention key or a key encrypted with a document retention key, and wherein the cryptographic key is protected by a document access policy" or "wherein the cryptographic key pairs are document retention keys or keys encrypted with a document retention key, and wherein the cryptographic key pairs are protected by a document access policy." Thus, Applicant respectfully submits that Merriam fails to fails to describe, expressly or inherently, at least the above-noted distinguishing features recited in claims 1, 33, and 38.

The only cryptographic operation discussed in Merriam is encryption of "the information set" itself (Merriam, col. 4, lines 12-14 and col. 5, lines 11-14). Merriam

further discloses that "only the encrypted form of the information set 120 is persistently stored within the information system" in order to preserve "the integrity of the information retention policy" (Merriam, col. 5, lines 24-36). Merriam defines "the term "information set"" as referring "broadly to any type of information, including but not limited to files, messages, web pages, communications, cryptographic keys, access codes, etc." (Merriam, col. 3, lines 22-26). However, Merriam explicitly discloses that "if one or more information sets need to be purged, then the retention manager 116 deletes (306) from the key repository 114 the key(s) associated with the encrypted versions of those information set(s) 120." (Merriam, col. 6, lines 31-34). In contrast, claims 1 and 38 as amended herein recite, using respective language, "wherein the cryptographic key is a document retention key or a key encrypted with a document retention key, and wherein the cryptographic key is protected by a document access policy." Claim 33 as amended herein recites, "wherein the cryptographic key pairs are document retention keys or keys encrypted with a document retention key, and wherein the cryptographic key pairs are protected by a document access policy." Thus, the cryptographic keys and cryptographic key pairs recited in claims 1, 33, and 38 are protected by a document access policy. By way of example and not limitation, the specification describes exemplary embodiments wherein"[i]n one implementation of the data structure 1120, at least one of the keys 1130 is encrypted in conjunction with the access rules 1129" and "[i]n another implementation of the data structure 1120, at least one of the keys 1130 is a file retention access key or is a key encrypted with a file retention access key, either of which can possibly be further protected by the access rules 1129." (Applicant's specification, paragraph [0097]).

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Satyajit NATH

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In contrast to the above-noted distinguishing features of claims 1, 33, and 38, Merriam explicitly discloses that the retention manager deletes keys associated with encrypted versions of information sets from its key repository. (Merriam, col. 6, lines 31-34). In Merriam's system, "the retention manager 116 is responsible for implementing an information retention policy to determine which keys to delete from the key repository 114." (Merriam, col. 4, lines 22-25). Merriam's information sets comprising "encrypted information 120" are clearly separate from "key repository 114" (Merriam, FIG. 1). Merriam may describe that keys in "key repository 114" may be "associated with the encrypted versions of . . . information set(s) 120" (Merriam, col. 6, lines 31-34). However, nowhere does Merriam describe, expressly or inherently, "wherein the cryptographic key is a document retention key or a key encrypted with a document retention key, and wherein the cryptographic key is protected by a document access policy" or "wherein the cryptographic key pairs are document retention keys or keys encrypted with a document retention key, and wherein the cryptographic key pairs are protected by a document access policy" as recited, using respective language, in claims 1, 33, and 38. For at least this reason, Merriam does not anticipate claims 1, 33, and 38. Accordingly, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of claims 1, 33, and 38 under 35 U.S.C. § 102.

Claims 2-12, and 45 depend from claim 1, and the same arguments above directed to claim 1 apply equally to these dependent claims. See *In Re Fine*, 837 F.2d 1071 (Fed. Cir. 1988) and M.P.E.P. § 2143.03.

Dependent claims 34-37 depend from claim 33, and the same arguments above directed to claim 33 apply equally to these claims. Also, claims 39-44 are similarly not

rendered obvious by the applied reference for the same reason as independent claim 38, from which they depend, and further in view of their own respective features.

Accordingly, Applicant respectfully requests that the rejections of claims 1-3 and 33-41 under 35 U.S.C. § 102(a) be reconsidered and withdrawn.

Rejections under 35 U.S.C. § 103

Claims 4-8 and 45 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Merriam in view of Official Notice by the Examiner. Applicant respectfully traverses this rejection.

The Examiner acknowledges that "Merriam does not disclose a network accessible resource whereby the resource determines if a condition has occurred based on a future event description transmitted over the Internet." (Office Action, page 11). At page 11 of the Office Action, the Examiner states that "[d]istributive processing utilizes a collection of computers that communicate over a network to perform different processing roles within a larger framework" and "[o]fficial notice of this teaching is taken." The Examiner asserts, which Applicant does not concede, that "[i]t would be obvious to one of ordinary skill in the art at the time the invention was made wherein the determining comprises interacting with a network accessible resource; wherein the determining comprises interacting with a web accessible resource" and "[o]ne would have been motivated to do so to enable the workload to be segregated based on a separation of concerns." (Office Action, pages 11-12).

Claim 4 as amended herein recites "wherein the determining comprises interacting with a network accessible resource, wherein the network accessible resource is one or more of a server, an application, or a system." Claim 5 as amended herein

recites "wherein the determining comprises interacting with a web accessible resource, wherein the web accessible resource is one or more of a web server, an application, or an external system."

Claims 4 and 5 depend from claim 1 through intervening claims 2 and 3. Applicant respectfully submits that the determining recited in claims 2 and 3 "wherein the determining comprises interacting with a network accessible resource, wherein the network accessible resource is one or more of a server, an application, or a system" and "wherein the determining comprises interacting with a web accessible resource, wherein the web accessible resource is one or more of a web server, an application, or an external system," as recited in claims 4 and 5, respectively, is not well known, conventional in the art, or obvious in the art. Applicant respectfully points out that pursuant to M.P.E.P. § 2143.01(A), the Examiner cannot remedy the deficiency as noted above in the teaching of the Merriam reference merely by asserting what is "very common" in the art; rather, the Patent Office must demonstrate all claim limitations based on substantial evidentiary support. See *In re Zurko*, 59 U.S.P.Q.2d 1693, 1697 (Fed. Cir. 2001). For example, this section of the M.P.E.P. states (emphasis added):

> [T]he facts asserted to be well-known, or to be common knowledge in the art **are capable of instant and unquestionable demonstration** as being well-known. As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be "**capable of such instant and unquestionable demonstration as to defy dispute**" (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)).

Applicant submits that this proof is not found in the conclusory rejection made by the Examiner, and thus the Examiner's use of Official Notice is improper. Applicant respectfully reminds the Examiner that the Administrative Procedure Act requires that

the Examiner's rejections employ "reasoned decision making" based on evidence from a fully developed administrative record. See *In re Lee*, 61 U.S.P.Q.2d 1430, 1433 (Fed. Cir. 2002). Patentability determinations which are based on what the Examiner believes is "basic knowledge" and "common," and that otherwise lack substantial evidentiary support, are impermissible. See *In re Zurko*, 59 U.S.P.Q.2d 1693, 1697 (Fed. Cir. 2001).

Therefore, Applicant respectfully traverses the rejection of claims 4-8 and 45 on the ground that the aforementioned Official Notice of "distributive processing" lacks the requisite substantial evidentiary support.

Further, claims 4-8 and 45 depend from claim 1, and the comments above directed to claim 1 apply equally to these dependent claims.

Accordingly, Applicant requests that the rejections of claims 4-8 and 45 under U.S.C. § 103(a) be removed.

Claims 9-12, 29-32, and 42-44 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Merriam in view of U.S. Pat. No. 7,249,251 to Todd *et al.* ("Todd"). Applicant respectfully traverses this rejection.

Independent claim 29 as amended herein recites, among other features:

> identifying, by the computing device, a document retention period associated with the document retention key, the document retention period being dependent on a future event that was unscheduled when the document retention period was associated with the electronic document, *wherein the document retention key is protected by a document access policy*[.]

The Examiner acknowledges that "Merriam does not disclose the document retention period being dependent on a future event that was unscheduled when the document retention period was associated with the electronic document." (Office Action, page 14). Todd does not cure the acknowledged deficiencies of Merriam. Todd

discloses that "it may be desirable to reduce the length of a previously defined retention period for a unit of data . . . it may be desirable to establish an event based retention period, wherein data is retained until a specified period after the occurrence of an event." (Todd, col. 6, lines 53-58). Todd further discloses that "a unit of data may include as content an x-ray of a patient that is desired to be maintained until a specified period of time (e.g., two years) after the patient's death." (Todd, col. 6, lines 58-61). Todd also discloses that "*modifying a retention period* based on the occurrence of an event may be performed by renewing previously defined retention periods until the event occurs" and "[t]he retention period for an entire class of data units may be changed by *altering the retention period* specified for the class." (Todd, col. 7, lines 20-23 and 44-46) (emphasis added). Although Todd describes modifying and altering retention periods for data units, Todd is not stated by the Examiner to teach, nor does it teach or suggest, at least "a document retention period associated with the document retention key, the document retention period being dependent on a future event that was unscheduled when the document retention period was associated with the electronic document, *wherein the document retention key is protected by a document access policy*," as recited in claim 29.

Moreover, nowhere does Todd teach or suggest "wherein the cryptographic key is a document retention key or a key encrypted with a document retention key, and wherein the cryptographic key is protected by a document access policy" as recited, using respective language, in claims 1 and 38.

Claims 30-32 depend from claim 29, and the comments above directed to claim 29 apply equally to these dependent claims.

Claims 9-12 and 42-44 depend from claims 1 and 39, respectively, and the same arguments above directed to claims 1 and 39 apply equally to claims 9-12 and 42-44.

Therefore, Todd cannot cure the deficiencies of Merriam, and cannot be used to establish a *prima facie* case of obviousness with regards to claims 9-12. Accordingly, Applicant requests that the rejection of claims 9-12, 29-32, and 42-44 under U.S.C. § 103(a) be removed.

Conclusion

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. Applicant believes that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.
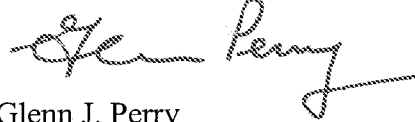
Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

Glenn J. Perry
Attorney for Applicant
Registration No. 28,458

Date: *15 Sept. 2010*

1100 New York Avenue, N.W.
Washington, D.C. 20005-3934
(202) 371-2600
1131746_1.doc